

This rule was filed as SIC Rule 88-7.

TITLE 2 PUBLIC FINANCE
CHAPTER 60 INVESTMENT AND DEPOSIT OF PUBLIC FUNDS
PART 15 COLLATERAL POLICY FOR NEW MEXICO SAVINGS AND LOAN ASSOCIATIONS
GOVERNING CERTIFICATES OF DEPOSIT CREATED AFTER MAY 25, 1988

2.60.15.1 ISSUING AGENCY: State Investment Council.
[Recompiled 10/01/01]

2.60.15.2 SCOPE: [RESERVED]
[Recompiled 10/01/01]

2.60.15.3 STATUTORY AUTHORITY: Sections 7-27-5, 7-27-5.2, 6-8-7, 6-10-10, 6-10-16, 6-10-17, 6-10-18, 6-10-20, 6-10-24.1, 6-10-29 and 6-10-35 NMSA 1978.
[Recompiled 10/01/01]

2.60.15.4 DURATION: [Permanent.]
[Recompiled 10/01/01]

2.60.15.5 EFFECTIVE DATE: These rules will become effective five (5) days after filing with the records and rules commission. [Filed June 6, 1988, effective June 11, 1988]
[Recompiled 10/01/01]

2.60.15.6 OBJECTIVE: In the exercise of its authority under Sections 7-27-5, 7-27-5.2, 6-8-7, 6-10-10, 6-10-16, 6-10-17, 6-10-18, 6-10-20, 6-10-24.1, 6-10-29 and 6-10-35 NMSA 1978, the state investment council (the "council") desires to minimize potential risks to existing and future deposits of severance tax permanent funds ("state funds"). As a first step towards achieving this objective, the council hereby directs the state investment officer to review the financial condition of each savings and loan association in the program. The review will include a determination of each savings and loan associations' regulatory net worth/average asset ratio, its total four quarter (successive quarters ending with the current quarter) net income (before or after taxes, whichever is greater, and determined by computing all four quarters on a consistent basis of either "before taxes" or "after taxes")/total average assets (over the past 12 months) ratio. The institutions shall then be classified according to the level of risk and each level of risk assigned an appropriate level of collateralization
[Recompiled 10/01/01]

2.60.15.7 DEFINITIONS:

A. "Securities" shall be defined as those securities eligible as collateral for severance tax permanent funds under Section 6-10-16 and 7-27-5.2 [repealed], as amended, and effective May 21, 1986, Art IV, Sec. 23, N.M. Constitution.

B. "Mortgages", shall be defined as eligible mortgage collateral under Section 7-27-5.2 NMSA 1978 [repealed] and the council's guidelines promulgated under Section 7-27-5.2 [repealed], as those guidelines may be amended from time to time by the council.

C. "Risk classifications:"

(1) "Class A" means a savings and loan association which meets all of the following financial conditions:

(a) A regulatory net worth to average asset ratio (as contained in the FHLB quarterly report) of 3 percent or greater.

(b) A ratio of its' four quarter net income (before or after taxes, whichever is greater, and determined by computing all four quarters on a consistent basis of either "before taxes" or "after taxes") to its total average assets of .30 percent or greater.

(c) Failure of a savings and loan association to meet any one of these financial conditions automatically results in reclassification into the next lower financial class.

(2) "Class B" means a savings and loan association which meets all of the following conditions:

(a) a regulatory net worth to average asset ratio (as contained in the FHLB quarterly report) of at least 2 percent;

(b) a ratio of its' four quarter net income (before or after taxes, whichever is greater, and determined by computing all four quarters on a consistent basis of either "before taxes" or "after taxes") to its total average assets of at least .2 percent.

(c) Failure of a savings and loan association to meet any one of these financial conditions automatically results in reclassification into the next lower financial class.

(3) "Class C" means a savings and loan association with any one or more of the following financial conditions:

(a) a regulatory net worth to average asset ratio (as contained in the FHLB quarterly report) of less than 2 percent;

(b) a ratio of its' four quarter net income (before or after taxes, whichever is greater, and determined by computing all four quarters on a consistent basis of either "before taxes" or "after taxes") to its total average assets of less than .20 percent.

(c) Failure of a savings and loan association to meet any one of these financial conditions automatically results in reclassification into the next lower financial class.

(4) "Class D" means a savings and loan association with both of the following financial conditions:

(a) a regulatory net worth to average asset ratio (as contained in the FHLB quarterly report) of less than 1 percent;

(b) a ratio of its' four quarter net income (before or after taxes, whichever is greater, and determined by computing all four quarters on a consistent basis of either "before taxes or after taxes" to its total average assets of less than .10 percent.

[Recompiled 10/01/01]

2.60.15.8 COLLATERALIZATION REQUIREMENTS:

A. The investment officer is directed to require collateral to be maintained for institutions within each classification at levels in accordance with the following schedule for all new deposits and all reinvestments of existing deposits. These rules will become effective five (5) days after filing with the records and rules commission.

(1) CLASS A. A savings and loan in this class shall be required to maintain collateral at the statutory minimum level set forth in Section 6-10-17 NMSA 1978 or Section 7-27-5.2 NMSA 1978 [repealed], as applicable. Collateral in the form of securities shall have an aggregate market value equal to 50 percent of the amount of deposit. Collateral in the form of mortgages shall have an aggregate outstanding principal balance equivalent to 120 percent of the amount of the initial deposit, and shall be maintained at a minimum of an aggregate outstanding principal balance equivalent to 100 percent of the amount of the deposit.

(2) CLASS B. A savings and loan in this class shall be required to maintain collateral in the form of securities with an aggregate market value equal to 75 percent of the amount of deposit or collateral in the form of mortgages with an aggregate outstanding principal balance equivalent to 120 percent of the amount of the initial deposit.

(3) CLASS C. A savings and loan in this class shall be required to maintain collateral in the form of securities with an aggregate market value equal to 100 & of the amount of the deposit, or collateral in the form of mortgages maintained at a minimum aggregate outstanding principal balance equivalent to 120 percent of the amount of the deposit.

(4) CLASS D. A savings and loan in this class shall be required to maintain collateral in the form of securities with an aggregate market value equal to 100 percent of the amount of the deposit, or collateral in the form of mortgages with an aggregate outstanding principal balance equivalent to 120 percent of the amount of the deposit. The investment officer may, at his discretion, require the pledging of additional mortgage collateral of up to 200 percent of the outstanding principal balance, or additional securities with an aggregate market value equal to 120 percent of the amount of the deposit to prevent the loss of public funds.

B. FSLIC insurance will not be counted as collateral unless the savings and loan is willing to certify quarterly in writing what the insurance amount is after prorating for other state accounts, including agency accounts.

C. If a savings and loan association is unable to meet the collateral level required by its financial classification, the state investment officer may make withdrawals of deposits to an amount which can be collateralized at an appropriate level, as above specified. The increased collateral levels shall be required until the ratios of the savings and loan, as determined by the risk assessment, return to a level which allows reclassification to

a less restrictive level. The collateral levels shall be governed by the policy in effect at the time of deposit or renewal of deposit.

D. Any qualifying savings and loan that fails to maintain the pledge of qualifying collateral or other security for deposits, or fails to substitute or provide additional qualifying collateral or security when requested by the council or state investment officer, is subject to a penalty by the director of the financial institutions division of up to one hundred dollars (\$100) a day for each two hundred and fifty thousand dollars (\$250,000) deposited for each day the violation continues. The state investment officer may also take any other action deemed necessary to secure state funds.

E. In making the decision to accept or reject collateral, the state investment office or the treasurer's office reserves the right to reject, either at the time of submission or at any time thereafter, any collateral that does not meet all statutory criteria and any collateral not of sufficient quality to protect the state's interests.

F. Depository institutions are to provide to the state investment office a complete audit of all mortgage collateral by an outside certified public accountant using generally accepted auditing standards to ensure that all requirements of the depository and custodial agreements, state law, these regulations and any other pertinent regulations have been met. The audit will be done annually or more frequently as requested by the state investment officer. Specific guidelines for the required audit of all mortgage collateral will be developed by the state investment office.

[Recompiled 10/01/01]

2.60.15.9 GENERAL:

A. In the event of a premature withdrawal of deposits, the savings and loan association may impose the minimum penalty provided by federal law.

B. The figures to be used by the investment officer in the risk-assessment analyses shall be calculated by each savings and loan association, including those relying on FSLIC insurance, from the quarterly federal home loan bank report and shall be furnished to the investment officer no later than the tenth day of the second month following that quarter, provided however, if the tenth day falls on a weekend or legal holiday, the figures shall be submitted on the next business day. The figures provided to the state investment officer by the savings and loan association shall be certified in writing by the president of the savings and loan association, an executive officer of the savings and loan, or a person authorized by corporate resolution of the savings and loan association to certify the information. The state investment officer shall, at any time between quarterly reporting periods, request additional certified information, as needed, to assess the risk level of any savings and loan association. If a savings and loan association fails to provide the requested information, it shall be required to maintain collateral in the form of securities or mortgages, as appropriate, with an aggregate market value equal to or greater than 100 percent of the amount of deposit for securities and an aggregate outstanding principal balance equal to or greater than 120 percent of the deposit for mortgages, as applicable.

C. The investment officer is also directed to require each savings and loan association which has had a final administrative enforcement action imposed upon it to advise the investment officer of such action. If the investment officer believes such action indicates a high level of risk in maintaining public deposits in that institution, he shall report to the council, who shall decide whether additional collateral will be required.

D. Notwithstanding any of the above provisions, the state investment officer may make an emergency withdrawal of state deposits prior to maturity when in his judgment such action is necessary in the exercise of reasonable care to protect state funds.

E. If a savings and loan association believes that exceptional circumstances exist indicating it would not be appropriate for the investment officer to take any of the actions listed above, the savings and loan association shall appear at a meeting of the state investment council to present its position. The council may at that time vote on whether an exception to the policy will be allowed, or the council may continue the issue in order to take further evidence, testimony or advice. In order to be placed on the council's agenda, the institution shall submit a written request, stating its position, to the investment office at least 10 calendar days prior to the meeting, including a bill of particulars, copies of any statutes or cases it intends to use in its presentation as well as a list of names, titles and business addresses and phone numbers of anyone whose testimony it deems necessary.

F. The state investment officer is further directed to take immediate and prudent steps to initiate this policy.

G. Nothing herein shall restrict the state treasurer, state investment officer or the state investment council from the lawful exercise of rights and duties conferred by law.

[Recompiled 10/01/01]

HISTORY OF 2.60.15 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives:

SIC Rule 88-7, Collateral Policy for New Mexico Savings and Loan Associations Governing Certificates of Deposit Created After May 25, 1988, 6-6-88.

History of Repealed Material: [RESERVED]